



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 354X)]

The Cincinnati, New Orleans and Texas Pacific Railway Company—Discontinuance of Service Exemption—in Scott County, Tenn.

The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP), a wholly owned subsidiary of Norfolk Southern Railway Company, has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service to discontinue service over approximately 3.09 miles of rail line from milepost NR 215.61 near Helenwood to milepost NR 218.7 at New River in Scott County, Tenn. (the Line). The Line traverses United States Postal Service Zip Code 37755.

CNOTP originally filed its notice of exemption on January 15, 2015, and supplemented the filing on January 29, 2015. In its Notice, CNOTP had stated that “Further Board approval is required for CNOTP to abandon service on the Line.” In the supplement, CNOTP corrects that statement. CNOTP explains that the underlying track and structures on the Line are owned by the City of Cincinnati, Ohio through an instrumentality known as Cincinnati Southern Railway (CSR), not by CNOTP. CNOTP states that CSR is not, and has never been, a common carrier subject to the Board’s regulations. CNOTP states that, following discontinuance, CSR, as owner of the track,

has agreed to sell the track to KT Group, L.L.C., who intends to salvage the track, but not the ties.

Because the discontinuance is over track that is owned by an entity that is not subject to Board jurisdiction, CNOTP's discontinuance would allow CSR to salvage track without seeking further Board authority, including the preparation of environmental documentation. In light of these circumstances, on March 3, 2015, CNOTP filed a request to hold the proceeding in abeyance so that it could complete environmental and historic reports in connection with the discontinuance. In a decision served on March 9, 2015, the Board held in abeyance the publication of the notice in the Federal Register and the effectiveness of the exemption pending completion and filing of an environmental and historic report.

OEA served a draft Environmental Assessment (EA) on May 8, 2015. OEA solicited public comments, but no comments in response to the EA were received by the May 22, 2015 due date. OEA issued a Final EA on May 22, 2015. No environmental or historic preservation issues have been raised by any party or identified by OEA, and no environmental conditions have been recommended by OEA. The Board will issue a separate decision finding that the proposed transaction will not significantly affect either the quality of the human environment or the conservation of energy resources.

CNOTP has certified that: (1) no local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years, and if there were any, it could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf

of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will become effective on July 12, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2),¹ must be filed by June 22, 2015.² Petitions to reopen must be filed by July 2, 2015, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

¹ Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 CFR 1002.2(f)(25).

² Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

A copy of any petition filed with the Board should be sent to CNOTP's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 8, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones

Clearance Clerk

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